

(c) *Review of the record.* After a timely submission of evidence by the debtor, an Administrative Judge from the HUD Board of Contract Appeals will review the evidence submitted by the Department which shows that all or part of the debt is past-due and legally enforceable. (Administrative Judges are appointed in accordance with 41 U.S.C. 607(b)(1)). The Administrative Judge shall make a determination based upon a review of the written record, except that the Administrative Judge may order an oral hearing if he or she finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

(d) *Previous decision by Board of Contract Appeals.* The debtor is not entitled to a review of the Department's intent to offset it, in a previous year the HUD Board of Contract Appeals has issued a decision on the merits that the debt is past-due and legally enforceable, *except* when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

§ 17.153 Determination of the Administrative Judge.

(a) Following the hearing or the review of the record, the Administrative Judge shall issue a written decision which includes the supporting rationale for the decision. The decision of the Administrative Judge concerning whether a debt or part of a debt is past-due and legally enforceable is the final agency decision with respect to the past-due status and enforceability of the debt.

(b) Copies of the Administrative Judge's decision will be distributed to the General Counsel of the Department, the Department's Office of Finance and Accounting, the debtor, and the debtor's attorney or other representative, if any.

(c) If the Administrative Judge's decision affirms that all or part of the

debt is past due and legally enforceable, the Secretary will notify the IRS after the Administrative Judge's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Office of Finance and Accounting. No referral will be made to the IRS if review of the debt by the Administrative Judge reverses the initial decision that the debt is past due and legally enforceable.

§ 17.154 Postponements, withdrawals and extensions of time.

(a) *Postponements and withdrawals.* The Secretary may, for good cause, postpone or withdraw referral of the debt to the IRS. (For example, a delay in the mail between the debtor and the Secretary could normally warrant a postponement; a mathematical error or computer malfunction could be the reason for a withdrawal.)

(b) *Extensions of time.* At the discretion of the Administrative Judge, time limitations required in these procedures may be extended in appropriate circumstances for good cause shown.

§ 17.155 Review of departmental records related to the debt.

(a) *Notification by debtor.* A debtor who intends to inspect or copy departmental records related to the debt as determined by the Secretary must send a letter to the Title I Representative stating his or her intention. The letter must be received by the Title I Representative within 25 calendar days from the date of the Department's Notice of Intent.

(b) *Department's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Title I Representative will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt.

§ 17.156 Stay of offset.

If the debtor timely notifies the Secretary that he or she is exercising a right described in § 17.152(a) and timely submits evidence in accordance with § 17.152(b), any notice to the IRS will be stayed until the issuance of a written decision by the Administrative Judge